

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Implementation of Section 302 of ) CS Docket No. 96-46  
the Telecommunications Act of 1996 )  
 )  
Open Video Systems )

COMMENTS OF  
NATIONAL BASKETBALL ASSOCIATION,  
NATIONAL HOCKEY LEAGUE,  
AND  
NATIONAL FOOTBALL LEAGUE

The National Basketball Association ("NBA"), the National Hockey League ("NHL") and the National Football League ("NFL") (sometimes jointly "the Leagues") hereby file the instant Comments in CS Docket No. 96-46, dealing with Open Video Systems ("OVS") and implementing Section 302 of the Telecommunications Act of 1996.

**Sports Exclusivity**

New Section 653(b)(1)(D) of the Communications Act requires the Commission to extend to OVS the provisions of Section 76.67 (as well as the network non-duplication and syndicated exclusivity sections) of the Commission's current rules, dealing with sports exclusivity. That rule, applicable to cable systems since its adoption in 1975, requires that cable operators, given

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notice<sup>1/</sup>, must protect against the importation of the "same game" within the Specified Zone of the home team without the consent of that team, if the game is not being shown over-the-air in that market.

The Commission in Paragraph 46 poses a number of questions for comment, all of which can be answered by focusing on the application of Section 76.67 -- and network non-duplication and syndicated exclusivity -- to cable television systems.

(a) Service to Multiple Community Units. The cable rule is quite specific --and has been for more than two decades: those community units in whole or in part within the Specified Zone are subject to the various program exclusivity rules. The burden has been on the cable operator to configure its system to comply with the rule; the OVS should be under the same obligation. If necessary, the signal can be physically trapped from the areas where the rule applies.<sup>2/</sup>

(b) Responsible Entity. The Commission also seeks comment on what OVS entity would be responsible for compliance with exclusivity rules generally and specifically where channels are shared. Ultimately, the Leagues will look to the system operator, in the same way they do in cable. Liability between a

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<sup>1/</sup> In adopting any OVS regulations, the Commission must make certain that provisions are made for FCC registration by program providers and/or system operators so that the Leagues can give proper notice.

<sup>2/</sup> Although the Leagues believe that the provisions of Section 76.67 should be applied identically as between cable systems and OVS, the Leagues do not believe that the Specified Zone necessarily provides for an adequate area of protection.

program provider and system operator may be best addressed in the contractual relationship between the provider and the operator, but choosing between them is not the responsibility of the sports team or league seeking protection against unconsented importation. Without regard as to the mechanics of protection, protection simply must be afforded.

#### **Retransmission Consent**

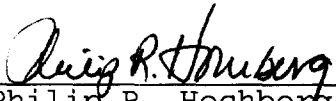
The Commission in Paragraph 59 also raises certain questions dealing with retransmission consent. The Leagues remind the Commission of the explicit statutory direction from the Cable Television Consumer Protection and Competition Act of 1992 (Pub. Law 102-385) that the Commission is not to construe the concept of retransmission consent as affecting existing or future license agreements between program suppliers and broadcast stations concerning, among other things, retransmission rights. As that Act acknowledges, it is essential that copyright holders be allowed to negotiate agreements with broadcast stations expressly dealing with retransmission rights and such agreements are not to be undermined by any authority granted to broadcasters.

Respectfully submitted,

NATIONAL BASKETBALL ASSOCIATION

NATIONAL HOCKEY LEAGUE

NATIONAL FOOTBALL LEAGUE

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